merits." The Restriction Requirement uses this statement to justify the withdrawal of claims 29-34 and 36-37 from further consideration.

However, with respect to the restriction of claims 29-34, directed to a "part feeding device", Applicants respectfully point out that claims directed to a "part feeding device" have been present in the application since its filing. For example, original claims 10-14 were directed to a "part feeding device". Original claims 10-14 were examined in the Office Actions mailed February 23, 2005, and September 8, 2005. Claims 10-14 were canceled and replaced by new claims 29-34 in the Amendment filed February 7, 2006, with the Request for Continued Examination. Claims 29-34 are also directed to a "part feeding device", and were examined in the Office Action mailed April 18, 2006. In response to the Office Action mailed April 18, 2006, claims 29-34 were amended to be directed to a "part feeding device for a sample analyzer". Thus, claims 29-34 continue to be directed to a "part feeding device", and it is unclear from the Restriction Requirement how the invention of claims 29-34 can be deemed to have not been originally presented for prosecution on the merits, as claims directed to a "part feeding device" have been present in the application all along. Further, it is noted that the subject matter of independent claim 29 is similar to that set forth in dependent claim 18, which was considered by the Examiner in the Office Action. Accordingly, the Examiner has unilaterally withdrawn claims 29-34 from consideration even though claims 29-34 have also been constructively elected by original presentation for prosecution.

Furthermore, new claims 36-37 are method claims directed to subject matter similar to allowed claim 23. Thus, these claims are directed to the same invention as claims 17-28 which the Office Action designates as being constructively elected, and accordingly, Applicants respectfully submit that restriction and withdrawal of claims 36-37 from consideration in a final action is also believed to be improper.

In view of the foregoing, the Restriction and withdrawal of claims 29-34 and 36-37 made by the Examiner while finally rejecting the remaining claims in a final action is contrary to the provisions of 37 CFR 1.142(a). Applicants respectfully request reconsideration of the Restriction Requirement, and either:

(1) that a new Office Action be issued that considers withdrawn claims 29-34 and 36-37, in addition to claims 17-28; or

(2) that the finality of the Office Action mailed November 1, 2006, be withdrawn, and a proper Restriction Requirement be issued in its place and in a NON-FINAL Action accordance with the provisions of 37 CFR 1.142(a) and MPEP Chapter 800.

Traversal of Restriction Requirement

Further, Applicants respectfully traverse the Restriction Requirement, and request withdrawal of the Restriction Requirement, as the Restriction Requirement fails to meet the requirements of MPEP 808. In particular, the Restriction Requirement fails to meet the Requirements of MPEP 808(B) which states that every requirement to restrict the claims of an application must include "the reasons why

there would be a **serious burden** on the examiner if restriction is not required" (emphasis added).

The Restriction Requirement sets forth reasons why Inventions I, II and III are considered distinct by the Examiner. However, the Restriction Requirement provides no showing of why there would be a serious burden on the Examiner to examine claims 29-34 and 36-37. For example, claims 29-34 (and their precursors, claims 10-14) have been present in the application and examined in all prior actions on the merits. The MPEP clearly states that where "the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions" (MPEP 808.02). In the Restriction Requirement, the Examiner has failed to show any reasons why there now exists a serious burden on the Examiner to examine claims 29-34, when such burden did not exist in the past three Office Actions.

Similarly, with respect to the restriction of claims 36 and 37, these claims are directed to subject matter similar to allowed claim 23, and the Examiner has failed to make any showing as to why there would be a serious burden on the Examiner to consider these claims. Accordingly, Applicants respectfully traverse the Restriction Requirement with respect to the restriction and withdrawal of claims 29-34 and 36-37, and request examination of these claims in the next action on the merits.